

**IN THE UNITED STATES DISTRICT COURT
FOR THE
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

**COMMODITY FUTURES TRADING
COMMISSION,**

Plaintiff,

v.

**KENNETH J. LEE, individually,
and d/b/a/ KJL Investment Group;**

and

KJL FINANCIAL GROUP, INC.,

Defendants.

CIVIL ACTION NO. 4: 02CV 01477 CAS

**COMPLAINT FOR INJUNCTIVE AND OTHER EQUITABLE RELIEF AND
FOR CIVIL PENALTIES UNDER THE COMMODITY EXCHANGE ACT**

I. SUMMARY

1. From at least October 1999 to the present (“relevant time period”), Kenneth J. Lee (“Lee”), individually and d/b/a/ KJL Investment Group, and KJL Financial Group, Inc. (collectively “defendants”) have solicited and accepted at least \$239,000, and possibly as much as \$1 million, from client investors (“clients”) to trade commodity futures. Among other things, defendants committed fraud by making misrepresentations of material facts when soliciting clients or potential clients, misappropriating at least \$52,000, and possibly as much as \$494,000, of client funds, and issuing false account statements that misrepresented that clients’ accounts were profitable, when, in fact, defendants’ trading was not profitable and defendants did not even invest most of the clients’ funds in commodity futures trading.

2. Consequently, defendants have engaged, are engaging, or are about to engage in acts or practices which violate anti-fraud sections of the Commodity Exchange Act (“Act”), as amended, 7 U.S.C. §§ 1 *et seq.* (2001), and Commission Regulations thereunder, 17 C.F.R. §§ 1 *et seq.* (2002).

3. Accordingly, the U.S. Commodity Futures Trading Commission (“Commission”) brings this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, to enjoin the defendants’ unlawful acts and practices and to compel their compliance with the Act. In addition, the Commission seeks disgorgement of the defendants’ ill-gotten gains, restitution to clients, civil monetary penalties and such other relief as this Court may deem necessary or appropriate.

4. Unless restrained and enjoined by this Court, the defendants are likely to continue to engage in the acts and practices alleged in this Complaint and similar acts and practices, as more fully described below.

II. JURISDICTION AND VENUE

5. The Act prohibits fraud in connection with the trading of commodity futures contracts and establishes a comprehensive system for regulating the purchase and sale of commodity futures contracts and options on commodity futures contracts. This Court has jurisdiction over this action pursuant to Section 6c of the Act, 7 U.S.C. § 13a-1, which authorizes the Commission to seek injunctive relief against any person whenever it shall appear to the Commission that such person has engaged, is engaging, or is about to engage in any act or practice constituting a violation of any provision of the Act or any rule, regulation or order thereunder.

6. Venue properly lies with this Court pursuant to Section 6c(e) of the Act, 7 U.S.C. § 13a(e), because the defendants are found in, inhabit, or transact business, among other places, in this district, or the acts and practices in violation of the Act have occurred, are occurring, or are about to

occur, among other places, within this district. Specifically, defendants (1) transacted the majority of their business within this district; (2) made phone calls and sent faxes, U.S. mail, and e-mail from this district; (3) accepted funds from clients residing within this district; and (4) maintained an active bank account in connection with their business enterprise within this district.

III. THE PARTIES

7. Plaintiff Commission is the independent federal regulatory agency responsible for administering and enforcing the provisions of the Act and the Regulations promulgated thereunder.

8. Defendant KJL Financial Group, Inc. (“KJLFGI”) is a Nevada corporation that was incorporated in April 2001 and has its principal place of business in St. Louis, Missouri. KJLFGI has never been registered with the Commission in any capacity.

9. Defendant Kenneth J. Lee (“Lee”) resides in St. Louis, Missouri. Lee is the president of KJLFGI, controlled the day-to-day operation of KJLFGI, and handled most, if not all, of its client business. Prior to the incorporation of KJLFGI, Lee did business under the name KJL Investment Group (“KJLIG”), a sole proprietorship under his exclusive control. Neither Lee nor KJLIG has ever been registered with the Commission in any capacity.

10. Defendants collectively represent a single, continuing enterprise controlled by Lee from October 1999 to the present.

IV. FACTS RELEVANT TO ALL COUNTS

A. Statutory Background

11. A commodity trading advisor (“CTA”) means, in part, any person who, for compensation or profit, engages in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any contract of sale of a

commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility. Section 1a(6) of the Act, 7 U.S.C. § 1a(6).

12. Pursuant to § 4m(1) of the Act, 7 U.S.C. § 6m(1), and subject to certain exceptions not applicable here, any person who comes within the statutory definition of a CTA must be registered with the Commission.

13. Pursuant to Regulation 4.30, 17 C.F.R. § 4.30, all CTAs are prohibited from soliciting, accepting, or receiving client funds, securities, or other property in the CTA's name (or from extending credit in lieu thereof) to purchase, margin, guarantee, or secure any commodity interest of the client.

14. Pursuant to Regulation 4.31, 17 C.F.R. § 4.31, prior to, or at the time of, soliciting a prospective client or entering into any agreement to direct a client or prospective client's commodity interest account or to guide the client's commodity interest trading, any CTA required to register under the Act must to deliver to the client or prospective client a true and accurate Disclosure Document containing the information set forth in Regulations 4.34 and 4.35, 17 C.F.R. §§ 4.34 and 4.35.

B. Defendants Made Misrepresentations to Potential Clients

15. From October 1999 to at least August 2002, defendants held themselves out as CTAs to the public by offering to trade and purporting to enter commodity futures trades on behalf of individual clients.

16. From October 1999 to at least May 2002, Lee made oral misrepresentations to potential commodity clients regarding his past trading performance and regarding the amounts that he was managing for others.

17. On at least one occasion, Lee provided a potential client with a purported account statement from a futures commission merchant (“FCM”) where Lee maintained an account. This statement was a forgery, in that it was not issued by the FCM listed on the letterhead. The purported account statement also contained false information regarding the account balance.

C. Defendants Accepted Client Funds for Commodity Futures Trading

18. From October 1999 to at least May 2002, defendants accepted at least \$239,000 and possibly as much as \$1 million or more from at least 9 and possibly as many as 24 or more clients for the purpose of trading commodity futures on their behalf.

19. From approximately October 1999 to April 16, 2001, Lee generally accepted checks in his own name or the name of KJLIG. After approximately April 16, 2001, Lee accepted checks in the name and on behalf of KJLFGI.

20. From October 1999 to April 2002, Lee only deposited approximately \$90,000 of the client funds into commodity futures trading accounts. Lee opened accounts at four different FCMs. Three of the accounts were opened in his name and one account was opened in the name of KJLFGI. Lee made all the trading decisions for these accounts.

21. From July 1999 to April 8, 2002, Lee’s trading of these accounts resulted in losses of approximately \$91,000.

22. On April 8, 2002, defendants ceased all commodity futures trading activities. Nevertheless, from April 8, 2002 to at least August 1, 2002, defendants continued to accept client funds intended for commodity futures trading or continued to send clients false account statements that claimed additional trading profits.

D. Defendants Sent False and Forged Account Statements to Clients

23. During the period of July 7-23, 2000, Lee faxed to one client at least six purported FCM account statements for a KJLFGI trading account purporting to show trading activity and the balance of the funds in that account.

24. The purported FCM account statements described in paragraph 23 were forgeries in that they were not issued by the FCM listed on the letterhead. These purported account statements also contained false information regarding trading activity and the account balances. Lee knew the purported FCM statements were false.

25. Further, from October 1999 to August 2002, Lee prepared and sent to at least six clients at least 30 written individual account statements or account summaries on KJLIG or KJLFGI letterhead. The statements listed the commodity futures trades purportedly made on each respective client's behalf and showed purported profits. These statements were mailed, e-mailed, or faxed.

26. The statements described in paragraph 25 contained false representations regarding the clients' profits, account balances and trades executed. Defendants knew these statements were false.

E. Defendants Misappropriated Client Funds

27. From October 1999 to at least July 2002, defendants have used at least \$52,000, and possibly as much as \$494,000, of client funds intended for futures trading for other unauthorized business and personal expenses, including payments to Lee's girlfriend, personal credit card payments, ATM withdrawals, and at least one personal mortgage payment. Defendants accepted at least \$32,000 of these funds after April 8, 2002, the date that defendants ceased all commodity futures trading.

**V. VIOLATIONS OF THE COMMODITY EXCHANGE ACT
AND COMMISSION REGULATIONS**

COUNT ONE

**VIOLATIONS OF SECTIONS 4b(a)(i), (ii), and (iii) OF THE ACT:
FRAUD BY MISREPRESENTATIONS, FALSE STATEMENTS
AND MISAPPROPRIATION**

28. The allegations set forth in paragraphs 1 through 27 are re-alleged and incorporated herein.

29. Sections 4b(a)(i), (ii), and (iii) of the Act, 7 U.S.C. §§ 6b(a)(i), (ii), and (iii), make it unlawful for any person to cheat or defraud or attempt to cheat or defraud; or willfully make or cause to be made to other persons false reports or statements, or willfully enter or cause to be entered for other persons false records; or willfully deceive or attempt to deceive by any means whatsoever other persons in or in connection with orders to make, or the making of, contracts of sale of commodities, for future delivery, made, or to be made, for or on behalf of such other persons where such contracts for future delivery were or may have been used for (a) hedging any transaction in interstate commerce in such commodity, or the produce or byproducts thereof, or (b) determining the price basis of any transaction in interstate commerce in such commodity, or (c) delivering any such commodity sold, shipped or received in interstate commerce for the fulfillment thereof.

30. Defendants knowingly and intentionally violated § 4b(a) (i), (ii), and (iii) of the Act by, among other things: (1) soliciting investments through fraudulent misrepresentations about the amount of commodity funds managed by defendants and defendants' past performance results when trading defendants' funds and the funds of others; (2) misappropriating client funds; (3) making or causing to be made false reports and false statements issued or communicated to clients who invested money with defendants to trade commodity futures contracts; and (4) making material misrepresentations and omitting material facts, including misrepresentations of each client's profits and account balances, and the trades executed on each client's behalf.

31. Each act of misappropriation, each material misrepresentation or omission, and each false report or statement made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4b(a)(i), (ii), and (iii) of the Act.

COUNT TWO

VIOLATIONS OF SECTION 4o(1) OF THE ACT: FRAUD BY A COMMODITY TRADING ADVISOR

32. The allegations set forth in paragraphs 1 through 27 are re-alleged and incorporated herein.

33. Beginning in or about October 1999 and continuing through the present, defendants, while acting as CTAs, have violated Section 4o(1) of the Act, 7 U.S.C. § 6o(1), in that they directly or indirectly employed or are employing a device, scheme or artifice to defraud clients or potential clients, or have engaged or are engaging in transactions, practices or a course of business which operated as a fraud or deceit upon clients or potential clients by using the mails or other means or instrumentalities of interstate commerce. Their fraudulent acts included, but were not limited to: (1) soliciting investments through fraudulent misrepresentations about the amount of commodity funds managed by defendants and defendants' past performance results when trading defendants' funds and the funds of others; (2) misappropriating client funds; (3) making or causing to be made false reports and false statements issued or communicated to clients who invested money with defendants to trade commodity futures contracts; and (4) making material misrepresentations and omitting material facts, including misrepresentations of each client's profits and account balances, and the trades executed on each client's behalf.

34. The acts and omissions in this Count were effected by the use of the mails and other means or instrumentalities of interstate commerce, namely, facsimile transmissions, phone calls, and e-mail transmissions.

35. Each act of misappropriation, each material misrepresentation or omission, and each false report or statement made during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4o(1) of the Act, 7 U.S.C. § 6o(1).

COUNT THREE

VIOLATIONS OF SECTION 4m(1) OF THE ACT: FAILURE TO REGISTER AS A COMMODITY TRADING ADVISOR

36. Paragraphs 1 through 27 are re-alleged and incorporated herein.

37. During the relevant time period, defendants have acted as CTAs, in that for compensation or profit, they have engaged in the business of advising others, either directly or through publications, writings, or electronic media, as to the value of or the advisability of trading in any contract of sale of a commodity for future delivery made or to be made on or subject to the rules of a contract market or derivatives transaction execution facility.

38. During the relevant time period, defendants offered to trade and purported to enter trades on behalf of clients and used or are using the mails and other means or instrumentalities of interstate commerce, directly or indirectly, to engage in business as CTAs.

39. Defendants have engaged and continue to engage in these activities without the benefit of registration, in violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

40. Each use of the mails or any means or instrumentality of interstate commerce in connection with the business of a CTA without proper registration during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Section 4m(1) of the Act, 7 U.S.C. § 6m(1).

COUNT FOUR

VIOLATIONS OF REGULATION 4.30: IMPROPERLY RECEIVING FUNDS AS A CTA

41. The allegations set forth in paragraphs 1 through 27 are re-alleged and incorporated herein.

42. From October 1999 to the present, defendants, while acting as CTAs, solicited, accepted, or received client funds, securities, or other property in their name (or extended credit in lieu thereof) to purchase, margin, guarantee, or secure any commodity interest of the client, in violation of Regulation 4.30, 17 C.F.R. § 4.30.

43. Each incident of receiving client funds in violation of Regulation 4.30, 17 C.F.R. § 4.30, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.30, 17 C.F.R. § 4.30.

COUNT FIVE

VIOLATIONS OF REGULATION 4.31: FAILURE TO PROVIDE DISCLOSURE DOCUMENTS

44. The allegations set forth in paragraphs 1 through 27 are re-alleged and incorporated herein.

45. From October 1999 to the present, defendants, while acting as CTAs, generally failed to deliver to clients or prospective clients a true and accurate Disclosure Document containing the information set forth in Regulations 4.34 and 4.35, 17 C.F.R. §§ 4.34 and 4.35, in violation of Regulation 4.31, 17 C.F.R. §§ 4.31.

46. Each failure to deliver a true and accurate Disclosure Document containing the information set forth in Regulations 4.34 and 4.35 during the relevant time period, including but not limited to those specifically alleged herein, is alleged as a separate and distinct violation of Regulation 4.31, 17 C.F.R. § 4.31.

VI. RELIEF REQUESTED

WHEREFORE, the Commission respectfully requests that this Court, as authorized by Section 6c of the Act, 7 U.S.C. § 13a-1, and pursuant to its own equitable powers:

- A. Find that defendants violated Sections 4b(a)(i), (ii), and (iii), 4m(1), and 4o(1) of Act, 7 U.S.C. §§ 6b(a)(i), (ii), and (iii), 6m(1), and 6o(1) (2001), and Regulations 4.30 and 4.31, 7 U.S.C. §§ 4.30 and 4.31;
- B. Enter orders of preliminary injunction restraining and enjoining defendants and all persons insofar as they are acting in the capacity of their agents, servants, successors, assigns, and attorneys, and all persons insofar as they are acting in active concert or participation with him who receive actual notice of such order by personal service or otherwise, from directly or indirectly:
 - 1. Destroying, mutilating, concealing, altering or disposing of any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of defendants, wherever located, including all such records concerning defendants' business operations;
 - 2. Refusing to permit authorized representatives of the Commission to inspect, when and as requested, any books and records, documents, correspondence, brochures, manuals, electronically stored data, tape records or other property of defendants, wherever located, including all such records concerning defendant's business operations; and
 - 3. Withdrawing, transferring, removing, dissipating, concealing or disposing of, in any manner, any funds, assets, or other property, wherever situated, including but not limited to, all funds, personal property, money or securities held in safes, safety deposit boxes and all funds on deposit in any financial

institution, bank or savings and loan account held by, under the control, or in the name of defendants.

C. Enter orders of preliminary and permanent injunctions prohibiting the defendants and any other person or entity associated with them, including any successor thereof, from:

1. engaging in conduct, in violation of Sections 4b(a)(i), (ii), and (iii), 4m(1), and 4o(1) of Act, 7 U.S.C. §§ 6b(a)(i), (ii), and (iii), 6m(1) and 6o(1) (2001) and Regulations 4.30 and 4.31, 7 U.S.C. §§ 4.30 and 4.31;
2. engaging in, controlling, or directing the trading of any commodity futures or options accounts for or on behalf of any other person or entity, whether by power of attorney or otherwise; and
3. applying for registration or claiming exemption from registration with the Commission in any capacity, and engaging in any activity requiring such registration or exemption from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2002), or acting as a principal, agent, officer or employee of any person registered, required to be registered, or exempted from registration with the Commission, except as provided for in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9)(2002). This includes, but is not limited to, soliciting, accepting, or receiving any funds, revenue or other property from any other person, giving commodity trading advice for compensation, except as provided in Regulation 4.14(a)(9), 17 C.F.R. § 4.14(a)(9) (2002), or soliciting

prospective customers related to the purchase or sale of commodity futures or options.

- D. Enter an order directing the defendants and any successors thereof, to disgorge, pursuant to such procedure as the Court may order, all benefits received from the acts or practices which constitute violations of the Act or Regulations, as described herein, and interest thereon from the date of such violations;
- E. Enter an order directing the defendants to make full restitution to every customer whose funds were received by him as a result of acts and practices which constituted violations of the Act and Regulations, as described herein, and interest thereon from the date of such violations;
- F. Enter an order assessing a civil monetary penalty against each Defendant in the amount of not more than the higher of \$110,000 or triple the monetary gain to the Defendant for each violation by the Defendant of the Act or Regulations occurring after November 27, 1996 and before October 23, 2000, and assessing a civil monetary penalty against each Defendant in the amount of not more than the higher of \$120,000 or triple the monetary gain to the Defendant for each violation by the Defendant of the Act or Regulation after October 23, 2000;
- G. Enter an order directing that the defendants make an accounting to the court of all their assets and liabilities, together with all funds they received from and paid to clients and other persons in connection with commodity futures transactions or purported commodity futures transactions, and all disbursements for any purpose whatsoever of funds received from commodity clients, including salaries, commissions, fees, loans and other disbursements of money and property of any

kind, from, but not limited to, January 1999 to and including the date of such accounting;

- H. Enter an order requiring defendants to pay costs and fees as permitted by 28 U.S.C. §§ 1920 and 2412(a)(2); and
- I. Order such other and further remedial ancillary relief as the Court may deem appropriate.

Dated: September 30, 2002

Respectfully submitted,

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